NO. 94-591

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1994

STATE OF OHIO

Petitioner

-vs-

WILLIAM SINGFIELD, III

Respondent

ON PETITION FOR A WRIT OF CERTIORARI
TO THE NINTH DISTRICT COURT OF APPEALS
FOR SUMMIT COUNTY, OHIO

RESPONDENT'S BRIEF IN OPPOSITION

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QUESTIONS PRESENTED

I. DOES A TRIAL COURT ERR WHEN IT APPLIES NEW YORK v. HERNANDEZ IN A CASE INVOLVING THE PEREMPTORY CHALLENGE OF A BLACK JUROR?

II. DOES AN APPELLATE COURT ERR WHEN IT REVIEWS THE ENTIRE RECORD AND DETERMINES THAT THE PROSECUTOR'S CLAIMS AS TO WHY HE EXERCISED A PEREMPTORY CHALLENGE WERE PRETEXTUAL?

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OPINIONS BELOW, JURISDICTION, AND STATUTORY PROVISIONS INVOLVED

Respondent accepts Petitioner's identification as to Opinions Below, Jurisdiction of the Court and Statutory Provisions Involved.

STATEMENT OF THE CASE

Respondent was convicted of Aggravated Murder, Aggravated Robbery and Weapon Under Disability on April 6, 1993. The convictions were reversed, and the case remanded for a new trial on January 26, 1994 by the Court of Appeals for the Ninth Judicial District, Summit County, Ohio. Following denial of Petitioner's Motion for Reconsideration, Petitioner filed a Memorandum in Support of Claimed Jurisdiction with the Ohio Supreme Court, which was unanimously denied on June 29, 1994.

Respondent's convictions were reversed because the Prosecutor used a peremptory challenge in a racially discriminatory fashion.[1]

The Prosecutor in this case dismissed Adrienne Sanford, an African-American female, from the venire because "... she had no children of her own, (s)he worked at a pharmacy, as I recall, and just something in the way she answered her questions."

The Ninth District Court of Appeals found that "... the prosecutor's claims that he exercised the peremptory challenge because the African-American venire person worked at a pharmacy and had no children were pretextual". The Court noted that four out of the twelve venire persons who remained on the jury panel at the conclusion of voir dire had no children, and each of these four jurors was Caucasian.

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[1] Nine (9) additional assignments of error were raised in the Court of Appeals but were not passed upon due to the disposition of Respondent's First Assignment of Error.

ARGUMENT AND AUTHORITIES FOR DENIAL OF THE WRIT

Petitioner contends that the trial court erred when it required the Prosecutor to state a neutral reason for his exercise of a peremptory challenge against a Black female prospective juror without the Defendant presenting a prima facie case of intentional discrimination. The Court of Appeals correctly decided this issue in accordance with this Court's decision in Hernandez v. New York, 500 U.S. _____, 114 L.Ed.2d 395 (1991), and its decision does not conflict with any decision of this Court or any Ohio Supreme Court case.

Furthermore, the Petitioner did not object to the procedures utilized by the trial court and did not raise this issue in any court below. Petitioner's failure to do so constitutes waiver, and prevents this Court from considering this issue. For both of the foregoing reasons, this issue does not warrant further review.

Petitioner also claims that a reviewing court should review the entire record in determining whether to affirm the trial court's findings that there was no intentional discrimination, and alleges that the Ninth District Court of Appeals refused to review the entire record of this case when it reversed Respondent's convictions. Petitioner's claims are not supported by the record.

The Ninth District Court of Appeals specifically held:

> Upon review of the appellate record, crediting the trial court's decision with all consistent, reasonable assumptions and according the trial court great deference in assessing the prosecutor's credibility, we are left with the conclusion that the trial court took an impermissible view of the evidence. (Pet. App. 60) (Emphasis added)

The Ninth District Court of Appeals also stated that it "... considered each of the arguments proffered by the parties to the appeal and analyzed these arguments in light of the record and the applicable case law" in its Journal Entry denying Petitioner's Motion for Reconsideration (Pet. App. 44) (Emphasis added).

Accordingly, Petitioner's claim that this Court should accept certiorari of this case because the Ninth District Court of Appeals was precluded from reviewing the entire record is totally unsupported by the record of proceedings below and affords no basis for review.

CONCLUSION

The Petition for a Writ of Certiorari should be denied.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of **RESPONDENT'S BRIEF IN OPPOSITION** was served by regular U.S. Mail, postage prepaid, this 26 day of October, 1994, upon Philip D. Bogdanoff, Assistant Prosecuting Attorney, Summit County Safety Building, 53 University Avenue, Akron, Ohio 44308.

IRVING B. SUGERMAN
Counsel for Respondent